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OCA 87-3750

OFFICE OF CONGRESSIONAL AFFAIRS

Routing Slip

	ACTION	INFO
1. D/OCA		X
2. DD/Legislation	XX	
3. DD/Senate Affairs		X
4. Ch/Senate Affairs		
5. DD/House Affairs		X
6. Ch/House Affairs		
7. Admin Officer		
8. Executive Officer		
9. FOIA Officer		
10. Constituent Inquiries Officer		
11. [redacted]		X
12.		

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Action Officer: [redacted]

Remarks:

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SPECIAL

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

August 21, 1987

O/CONGRESSIONAL AFFAIRS
87-3750

Leg

LEGISLATIVE REFERRAL MEMORANDUM

TO: **Legislative Liaison Officer -**
Department of State
Central Intelligence Agency
National Security Council
Department of Justice

SUBJECT: DOD draft report on H.R. 1586, "Defense Black Budget Oversight Act."

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

A response to this request for your views is needed no later than MONDAY, SEPTEMBER 21, 1987.

Questions should be referred to SUE THAU/ANNETTE ROONEY (395-7300), the legislative analyst in this office.

Ronald K. Peterson

RONALD K. PETERSON FOR
Assistant Director for
Legislative Reference

Enclosures

cc: R. Neely
R. Rettman
G Jones
R. Moran

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GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE

WASHINGTON, D.C. 20301-1600

Honorable Les Aspin
Chairman, Committee on Armed Services
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This reponds to your request for the views of the Department of Defense on H.R. 1586, 100th Congress, a bill entitled the "Defense Black Budget Oversight Act." The stated purpose of H.R. 1586 is "to improve congressional oversight of defense programs treated in a manner designed to conceal the existence or scope of the program."

The Defense Department opposes this bill and recommends that no action be taken on it.

An important objection is based on the necessity to maintain the secrecy and security on which the future value and effectiveness of special access programs depend. Such programs are designed to enable the United States to cope with identified foreign threats, and their public disclosure would be harmful to their future effectiveness.

Section 2.(a) of the bill would require unclassified reporting of the total amount requested for special access programs in the Department of Defense budget, and section 2.(b) would require an unclassified listing of the total amounts requested and appropriated for special access programs in each of the previous five years.

Experience indicates that once a set of activities of a classified nature is identified in an unclassified budget on a single line basis, pressures for disclosure of more, and then more, and even more data follow. What happened in the handling of the Atomic Energy Commission budget is an example.

While unclassified reporting of a single figure representing the total amount requested for special access programs would not, of itself, necessarily pose a security problem, such a figure still might provide important information to hostile intelligence analysts when linked with data available to them from other sources. Publication of such a figure could be expected to lead to pressures for release of breakdowns by Service, by appropriation, and by functional areas. Department of Defense responses to such pressures would increase the likelihood of compromising disclosures and damage to the national security.

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The information to be reported under section 2.(a) of H.R. 1586 already is available to the Congress on a properly classified basis, and the Department of Defense is prepared to format this information in whatever manner the Congress desires, providing an appropriate special access security classification is maintained and appropriate protection is affored.

The Department of Defense is also concerned with provisions in the bill for notification and justification for each special access program. Determining whether a particular sensitive program should be funded within the Defense Department budget is, of course, a responsibility of the Congress, but determining whether a program is so sensitive that it should be handled in a special access manner properly falls, in the Defense Department view, within the authority of Executive Branch elements responsible for the national security. Submission of program details in the manner called for in this bill would magnify the difficulty of properly protecting the security of special access programs.

The Defense Department notes with approval that the bill recognizes the sensitivity of certain special access projects (such as those in the National Foreign Intelligence Program, intelligence-related activity, and special operations activity) and exempts them from application of procedures set forth in the bill. The Department of Defense considers, however, that other special access programs under its cognizance are equally sensitive in nature, and this is a further reason why the Department of Defense recommends no action be taken on the bill.

An additional matter of concern to the Department of Defense is that the bill would eliminate the flexibility of the committee chairman to exercise any discretion or control with respect to access to information concerning special access programs. H.R. 1586 at section 3.(b) provides that "Any member of a defense committee, upon submitting a request in writing to the chairman of that committee, shall be permitted to read any notice and justification received by the chairman of that committee."

The Department of Defense recognizes that introduction of this bill reflects some congressional concern with the adequacy of present arrangements for handling information on special access programs. The Department is prepared to work with the defense committees to modify these procedures as may be necessary.

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The Office of Management and Budget advises that there is no objection to the presentation of this report for the consideration of the Committee.

Sincerely,

~~H. Lawrence Garrett III~~

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